

# CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 383

March 18, 1975

## ESTIMATED TAX PENALTY: WHEN REQUIRED PAYMENT IS MINIMUM TAX

### Syllabus:

A corporate taxpayer's required estimate tax payment pursuant to Section 25954 of the Revenue and Taxation Code is a minimum tax. The taxpayer fails to make this payment as required by Section 25563 of the Revenue and Taxation Code.

### Questions:

(1) Is the computation of the penalty relating to the failure to pay an estimated tax of a minimum tax to be treated as if it were payable in installments the same as the payment of an estimated tax in a larger amount?

(2) Does the payment of the estimated tax due of a minimum tax at a date after it was due negate the computation of penalties associated with due dates of earlier installments?

### Decisions:

(1) Yes.

(2) No.

### Discussion:

Section 25563 of the Revenue and Taxation Code requires that if a taxpayer's estimated tax for income years beginning after December 31, 1971 is the minimum tax, the payment of the minimum tax be made by the 15th day of the fourth month of the income year (sixth month for income years ending on or before November 30, 1973).

Section 25954 of the Revenue and Taxation Code provides in part that the penalty shall not apply "with respect to any . . . installment if the total amount of all payments. . . of such installment equals or exceeds the amount which . . . " is the minimum amount required to be paid pursuant to this section.

In accordance with this section and Sections 25952 and 25953, it has been the department's practice to compute the estimate tax penalty on the amount of underpayment as of each installment date. That is, the penalty is computed from

one installment due date to the next to the due date of the return. (In general, see federal Regulation 1.6655-1.)

In computing the amount of penalty due for a particular installment period, the general rule is that installment payments are accumulated and related to the required estimate amount due at that particular point in time to determine whether or not there is any underpayment subject to the estimate penalty. (See federal Regulation 1.6655-2(c)(3).)

Inasmuch as the sections of the Revenue and Taxation Code dealing with the computation of the penalty associated with underpayment of the estimate tax (Sections 25951-25954), do not differentiate between an estimate tax of a minimum tax and any other amount of estimated tax, the legislative intent is deemed to be to treat them in the same manner.

Furthermore, since Section 25954 requires the taxpayer to make payment ". . . on or before the last date prescribed for the payment of such installment . . .," once a taxpayer fails to make payment of the minimum tax as of a particular installment date, any subsequent payment of estimated tax will not qualify the taxpayer for the exception, granted therein, in respect to the penalty associated with this particular installment, but only will serve to reduce the amount of underpayment in computing the amount of the penalty under Sections 25952 and 25953.

Example 1. In respect to income year 197X, a calendar year corporate taxpayer's estimate tax, pursuant to Section 25954, et seq., is a minimum tax. The tax as shown on the return eventually filed for income year 197X is \$2,000. If the taxpayer pays the estimate tax of a minimum tax by the date the first installment is due, there is no penalty.

If the minimum tax is paid on the date the second installment is due, the penalty is computed as follows:

	<u>4/15/7X</u>	<u>6/15/7X</u>	<u>9/15/7X</u>	<u>12/15/7X</u>
Current Year Tax \$2,000				
Required Installment Payments (80% of tax shown on return)	\$400	\$400	\$400	\$400
Payments Made by Taxpayer	<u>-0-</u>	<u>(\$200) (*)</u>	<u>-0-</u>	<u>-0-</u>
Underpayments-1st Installment	\$400	\$400	\$400	\$400
2nd Installment		-0-	-0-	-0-
3rd Installment			-0-	-0-
4th Installment				<u>-0-</u>
Total Underpayment	<u>\$400</u>	<u>\$400</u>	<u>\$400</u>	<u>\$400</u>

Penalty (Underpayment X 6% per Annum)	\$ 4	\$ 6	\$ 6	\$ 6
Total Penalty				<u>\$ 22</u>

\* Minimum Tax.

Example 2. If no estimated tax was paid, the penalty would be \$58. The computation is set out below:

	<u>4/15/7X</u>	<u>6/15/7X</u>	<u>9/15/7X</u>	<u>12/15/7X</u>
Current Year Tax \$2,000				
Required Installment Payments (80% of tax shown on return)	\$400	\$400	\$ 400	\$ 400
Payments Made by Taxpayer	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Underpayments-1st Installment	\$400	\$400	\$ 400	\$ 400
2nd Installment		400	400	400
3rd Installment			400	400
4th Installment				<u>400</u>
Total Underpayment	\$400	\$800	\$1,200	\$1,600
Penalty (Underpayment X 6% per Annum)	\$ 4	\$ 12	\$ 18	\$ 24
Total Penalty				<u>\$ 58</u>